IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.5565 OF 2005

Ayyub Yakub Shaikh @ Fruitwale : Petitioner.

versus

Nusrat Begam Shaikh Ayyub @
Fruitwale and ors. : Respondents.

Mr.Shadab C. Peerzade for the petitioner.
Smt.V.R.Bhosale, APP, for the State.

CORAM : D.G.DESHPANDE, J.

DATED : MARCH 18, 2006.

P.C.

1. Petitioner, who is the husband of Respondent No.1, has challenged the order of maintenance passed by the J.M.F.C. Sangamner. By the impugned order the petitioner/husband was directed to pay monthly maintenance of Rs.500/- to the wife/respondent No.1 and Rs.250/- to the children. Petitioner is a taxi driver plying

taxi in Bombay. Relation at the time of passing the order was admitted and, therefore, in the circumstances, the lower court was justified in fixing the maintenance.

2. Further it was tried to contend by the advocate for the petitioner that the petitioner has given Talaq after passing the order and, therefore, now under the Muslim Women (Protection of Rights on Divorce) Act, he is not liable to pay any amount. He has filed True Translation of Talaq-nama at Exhibit C to the Application. There is nothing with the petitioner to show that this Talaq-nama was served upon the wife. That is a mandatory requirement and is conceded by the advocate for the petitioner. Further the advocate for the petitioner has shown his willingness to maintain his daughter, if her custody is granted. But to me, this offer appears to avoid maintenance. Therefore, there is no merit in this petition. It is dismissed. It is clarified that if in separate proceeding the petitioner proves that he has given Talaq to the wife, then he will not be liable to pay maintenance from that day.

[D.G.DESHPANDE]